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Filed May 8, 2008

Attorney for Platinum Properties 1, Inc.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re

USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re

USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,

Debtor.

In re

USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re

USA SECURITIES, LLC,

Debtor.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☒ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
Case No. BK-S-06-10725 LBR

**MOTION FOR ORDER IN SUPPORT OF
PLAN CONFIRMATION ORDER**

DATE: JUNE 9, 2008

TIME: 9:30 A.M.

Platinum Properties 1, Inc. (Platinum"), by and through its counsel, Brownstein Hyatt Farber Schreck, LLP, hereby moves the Court for Entry of Order in Support of Confirmed Plan ("Motion"). This Motion is made and based upon the attached points and authorities, the

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pleadings and papers on file herein and upon such argument as the Court may entertain at the hearing on the Motion.

POINTS AND AUTHORITIES

I. Factual Background

A. USACM and Related Bankruptcy Cases

USA Commercial Mortgage Company ("USACM"), USA Securities, LLC, USA Capital Realty Advisors, LLC, USA Capital Diversified Trust Deed Fund, LLC and USA Capital First Trust Deed Fund, LLC ("FTDF"), and collectively the "Debtors"), filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on April 13, 2006 in the United States Bankruptcy Court for the District of Nevada ("Nevada Bankruptcy Court"), thereby commencing the above-captioned bankruptcy cases. *See In re USA Commercial Mortgage Company*, Bankruptcy Case No. BK-S-06-10725-LBR, Docket no. 1. By Order entered on May 9, 2006, the Court approved the joint administration of the Debtors' bankruptcy cases. *See* Docket No. 184.

On January 8, 2007, the Court entered the [Proposed] Order Confirming The "Debtors' Third Amended Joint Plan of Reorganization," As Modified Herein ("Confirmation Order"), thereby confirming the Debtors' third amended joint plan of reorganization, as modified by the Confirmation Order ("Plan"). The Confirmation Order also approved certain documents filed in conjunction with the Plan and transactions contemplated therein. *See* Docket No. 2376. The Confirmation Order approved, *inter alia*, the Asset Purchase Agreement, dated December 8, 2006 ("APA") by and between USA Commercial Mortgage Company and USA Capital First Trust Deed Fund, LLC, as "Sellers," and USA Capital Diversified Trust Deed Fund, LLC, USA Capital Realty Advisors, LLC and USA Securities, LLC as "Acknowledging Parties," and Compass Partners, LLC ("Compass") as "Purchaser." *See* Notice of Filing of Asset Purchase Agreement Dated December 8, 2006, Docket No. 2164.

The Plan and the APA set forth the terms and conditions of the Asset Sale Transaction, as defined in the Plan, pursuant to which Compass (or its designee) would acquire certain assets of the Debtors, as defined in the APA. The Asset Sale Transaction to Compass closed on February

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16, 2007 ("Closing"). As set forth in paragraph 14 of the Confirmation Order, the Assets (as defined in the APA) were conveyed to Compass free and clear of all liens, claims, interests, obligations and encumbrances, except as expressly permitted or otherwise specifically provided for in the APA or the Confirmation Order. *See* Confirmation Order, Docket No. 2376, pages 5-6 of 29 (copy attached hereto as **Exhibit 1**).

The APA defined the term "Assets" to include FTDF Assets listed on Schedule 1 to the APA and USACM's interests in Servicing Agreements and Personal Property as set forth in Schedule 2 to the APA. *See* Docket 2164-2, page 5 of 24 (copy attached hereto as **Exhibit 2**). Schedule 2 to the APA includes an Asset described as follows:

<u>Loan Name</u>	<u>Origination Date</u>	<u>7/31/06 Loan Outstanding</u>	<u>FTDF Ownership</u>	<u>USMC Ownership</u>
HFA-Windham	11/15/2004	5,550,000	0.00%	0.00%

See Docket No. 2164-3, page 14 of 28 (copy attached hereto as **Exhibit 3**). Schedule 1 to the APA contains no reference to any loan identified as "HFA-Windham. *See* Docket No. 2164-3, pages 10 through 12 of 28 (copy attached hereto as **Exhibit 4**).¹

In accordance with the Confirmation Order, and upon the Closing of the Asset Sale Transaction, the Debtors conveyed to Compass all right, title and claims with respect to the transfers made by USACM to HFAH Asylum, LLC and/or Homes for America Holdings, Inc., and referenced as the "HFA-Windham" loan in Schedule 2 to the APA ("HFA-Windham Loan"). This transfer included, without limitation, the right to collect and receive repayment (i.e. to service that loan). *See* Confirmation Order, **Exhibit 1**; Plan, Docket No. 1799, page 51 of 92 (copy attached hereto as **Exhibit 5**).

Every party-in-interest, including, without limitation, the Debtors, the Debtors' successors in interest, and the Direct Lenders with respect to the HFA-Windham Loan, including the HFA-Windham Lenders listed in **Exhibit B** attached to **Exhibit 7** hereto, are barred from challenging the right of Compass, or its assignee, to collect and receive repayment of the HFA-Windham

¹ Schedule 2 attached to the Plan references the HFA-Windham Loan as "HFA-Windham (HFAH Asylum, LLC)." *See* Docket No. 1799-3, page 4 of 18. Schedule 3.3 attached to the Plan (concerning threatened litigation) references the HFA-Windham Loan and indicates the "borrowers" are "Homes For America Holdings, and affiliates, Homes for America Asylum, LLC." *See* Docket No. 1799-3, pages 9 and 10 of 18 (copies of the documents referenced in this footnote are attached hereto as **Exhibit 6**).

1 Loan, including the assertion of any "Surviving Section 3 Right", as that term is defined in
 2 Paragraph 14 of the Confirmation Order. *See* Confirmation Order, Docket No. 2376, pages 5
 3 and 6 of 29 (copy attached hereto as **Exhibit 1**).

4 **B. The HFA Windham Transactions and Litigation**

5 **1. The Enterprise Mortgage**

6 In 1994, the Town of Windham, Connecticut transferred certain parcels of real property
 7 located in that town at 322 Main Street and 118 Windham Road ("Windham Property") to
 8 Windham Mills Development Corporation ("Windham Mills"). On or about August 30, 1999,
 9 Windham Mills executed a Promissory Note in the principal amount of \$4,800,000 ("Enterprise
 10 Note") in favor of Enterprise Capital, Inc., n/k/a Independence Bank ("Independence Bank").
 11 The Enterprise Note was secured by an Open End Mortgage Deed, recorded in the Windham
 12 Land Records, pursuant to which Windham Mills granted a security interest in the Windham
 13 Property to Independence Bank ("Windham Mortgage"). The Enterprise Note was also recorded
 14 in the Windham Land Records as an exhibit to the Enterprise Mortgage. *See Exhibits E and F*
 15 *to Exhibit 7.*

16 Independence Bank subsequently commenced litigation in the Superior Court, Judicial
 17 District of New London, Connecticut entitled *Independence Bank, f/k/a Enterprise Capital, Inc.*
 18 *v. Windham Mills Development Corporation, et al.*, Case No. CV03-0071580 S, in which the
 19 Bank sought a judgment of strict foreclosure and sale with respect to the Windham Property
 20 ("Foreclosure Action"). Pursuant to an order dated June 28, 2004 ("Foreclosure Judgment"), the
 21 Superior Court, Judicial District of Windham at Putnam, entered a Judgment of Foreclosure by
 22 Sale in favor of Independence Bank and against Windham Mills and other defendants.

23 **2. Homes for America Holdings and the Collateral Assignment**

24 In 2004, Homes For America Holdings, Inc. ("HFA Holdings") expressed an interest in
 25 purchasing the Windham Property from Windham Mills.² To facilitate the acquisition of the
 26 Windham Property by HFA Holdings, USACM and/or USA Capital Diversified Trust Deed

27
 28 ² Certain of the assertions contained in this portion of the instant motion are derived from the "Platinum Complaint"
 referenced below. The Platinum Complaint (which is verified as true and correct pursuant to 28 U.S.C. § 1746) and
 certain of its Exhibits are attached hereto as **Exhibit 7**.

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1 Fund, LLC agreed to find lenders willing to invest funds to make a loan (or loans) to HFA
2 Holdings. Thereafter, USACM sent offering circulars and inquiries to potential individual
3 lenders who would, collectively, lend the necessary funds to HFA Holdings to purchase the
4 Windham Property. According to the offering circular used by USACM to solicit investments in
5 this project, the loan proceeds were to be used to acquire and make improvements on the
6 Windham Property and investors were to have a first trust deed on the Property. By November
7 2004, USACM had succeeded in raising over \$5,000,000 from direct lenders, which funds were
8 used to make a loan totaling \$5,550,000 related to this transaction. There were a total of 74
9 direct investors in this loan ("HFA-Windham Lenders"), who are listed on **Exhibit B to Exhibit**
10 **7. See Exhibit 7, ¶¶ 7-15; Exhibit G to Exhibit 7** (Declaration(sworn under penalty of perjury)
11 of Karim Chowdhury, CFO for HFA Holdings), ¶¶ 11-12.

12 On or about November 10, 2004, Independence Bank assigned all of its rights under and
13 interest in the Enterprise Note and the Enterprise Mortgage to HFAH Asylum, Inc. ("Asylum").
14 This assignment was accomplished pursuant to a Note Allonge, dated November 10, 2004, an
15 Assignment of Open-End Mortgage Deed, a Collateral Assignment of Leases and Rents
16 ("Assignment of Mortgage"), and an Assignment of Promissory Note and Mortgage Deed and
17 Loan Documents from Independence Bank in favor of Asylum. *See Exhibit 7, ¶¶ 16-18;*
18 **Exhibit G to Exhibit 7, ¶¶ 11-12.**

19 On November 16, 2004, USACM wired an initial advance of \$5,050,000 of funds raised
20 from the HFA-Windham Lenders to HFA Asylum, a wholly-owned subsidiary of HFA Holdings.
21 On January 3, 2006, another advance of HFA-Windham Lenders' money, totaling \$500,000 was
22 made by USACM to HFA Asylum. On or about November 16, 2004, HFA Asylum, with the
23 knowledge and consent of HFA Holdings, executed a document entitled "Collateral Assignment
24 (Security Agreement)" which provided the HFA-Windham Lenders with a security interest in the
25 Enterprise Note and the Enterprise Mortgage, together with all right, title and interest of HFA
26 Asylum therein, as well as all right, title and interest of HFA Asylum in all substitute collateral
27 and proceeds along with all other documents that Windham Mills gave to the Independence Bank
28

1 in connection with the Enterprise Note and the Enterprise Mortgage ("Collateral Assignment").
 2 See **Exhibit 7**, ¶¶ 15-17.

3 Because the Enterprise Note and the Enterprise Mortgage were the subject of a pending
 4 foreclosure action at the time they were assigned to HFA Asylum, the Collateral assignment
 5 specifically granted the HFA-Windham Lenders the ability to prosecute the foreclosure action
 6 against Windham Mills in the event of a default by HFA Asylum on the loan. Because HFA
 7 Holdings and HFA Asylum had changed the terms of the loan originally provided by the HFA
 8 Lenders, the Collateral Assignment also required HFA Asylum to execute loan documents to
 9 substantiate the loan between HFA Asylum and the HFA-Windham Lenders, and it required
 10 HFA Holdings to execute and deliver a guarantee of the loan for the benefit of the HFA-
 11 Windham Lenders. See **Exhibit 7**, ¶¶ 22-23; **Exhibit C** to **Exhibit 7**. HFA Holdings and HFA
 12 Asylum have, to date, failed to comply with these requirements. See **Exhibit 7**, ¶ 26.

13 Pursuant to the terms of the Collateral Assignment, USACM took possession of the
 14 Enterprise Note and the Enterprise Mortgage to perfect the HFA-Windham Lenders' security
 15 interest in those instruments. USACM, however, lost the original Note and Mortgage. See
 16 **Exhibit 7**, ¶¶ 24-25; **Exhibit D** to **Exhibit 7**.

17 3. *Windham Mills Bankruptcy*

18 On December 15, 2004, just prior to the scheduled sale pursuant to the Foreclosure
 19 Judgment, Windham Mills filed a voluntary bankruptcy petition ("Windham Bankruptcy Case")
 20 under Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code"), in the United
 21 States Bankruptcy Court for the District of Connecticut (Hartford Division) ("Connecticut
 22 Bankruptcy Court"), thereby commencing a case entitled *In re Windham Mills Development*
 23 *Corp.*, Bankruptcy Case Number 04-23619 (RLK). See Docket Sheet (relevant portions),
 24 attached as **Exhibit 8** hereto. HFA Asylum timely filed a proof of claim in the Windham
 25 Bankruptcy Case with respect to its claims under the Enterprise Note and the Enterprise
 26 Mortgage, asserting a claim in the amount of (\$5,255,332.80), plus accruing interest, fees and
 27 costs. See **Exhibit 9** hereto. Pursuant to an order entered on July 3, 2007, the Connecticut
 28

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1 Bankruptcy Court appointed Louis Testa, Esq. ("Chapter 11 Trustee") as the Chapter 11 Trustee
2 in the Windham Bankruptcy Case. *See Exhibit 8*, Docket Entry No. 391.

3 **4. The HFA Recovery Lawsuit**

4 On June 7, 2007, an entity known as HFA Windham recovery, LLC ("HFA Recovery"),
5 which asserted that it was comprised of or represented approximately 80% of the HFA Lenders,
6 filed suit in the Supreme Court of the State of New York, County of New York, Case No.
7 601917/2007 ("New York Lawsuit"). In its complaint, HFA Recovery asserted claims against
8 defendants HFA Asylum, HFA Holdings, Compass Financial Partners, LLC, Compass USA SPE
9 LLC and Compass Partners LLC. On March 25, 2008, HFA Recovery filed a "Plaintiff's Notice
10 of motion to Discontinue Claims Against Defendants" ("Discontinuance Motion"). The
11 Discontinuance Motion remains pending. *See Exhibit H to Exhibit 7, ¶¶ F through I.*

12 **5. The Platinum Adversary Proceeding**

13 As noted above, Compass purchased certain assets from the USACM bankruptcy estates,
14 including USACM's loan servicing rights related to the HFA-Windham Loan. On December 13,
15 2007, Compass executed an Assignment and Assumption of Loan Servicing Agreements,
16 pursuant to which Compass transferred to Platinum ("Platinum Assignment") all of its right, title
17 and interest in certain loan servicing agreements, including the HFA-Windham Loan. *See*
18 **Exhibit H to Exhibit 7.** In connection with the Platinum Assignment, HFA Recovery agreed
19 to dismiss the New York Lawsuit. As a result of the Platinum Assignment, Platinum is the
20 current, authorized loan servicer in connection with the HFA Windham Loan. The HFA-
21 Windham Lenders have authorized Platinum to act on their behalf with respect to the HFA
22 Windham Loan and their rights pursuant to the Collateral Assignment.

23 On or about February 26, 2008, Platinum commenced an adversary proceeding in the
24 Windham Bankruptcy Case, Adversary Proceeding Number 08-02015 ("Platinum Adversary
25 Proceeding"), naming the Chapter 11 Trustee, Louis Testa, Esq., and HFA Asylum as
26 defendants. *See Exhibit 7.* The complaint in the Platinum Adversary Proceeding alleges that the
27 Trustee has been attempting to sell the Windham Property and that, because the debt
28 encumbering the property exceeds its value, he needs the secured creditor's consent to

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1 consummate a sale. The complaint further alleges that, even though the HFA-Windham Lenders
2 are the real parties in interest with respect to the HFA-Windham Mortgage, the Trustee is
3 nevertheless dealing exclusively with HFA-Windham Asylum. The complaint seeks (a)
4 declaratory relief regarding the validity of the HFA Lenders' claims relating to the Windham
5 Property and their standing in that capacity; (b) a permanent injunction barring the Trustee from
6 negotiating with the Trustee regarding the Windham Property; (c) imposition of a constructive
7 trust on the Windham Property; (d) foreclosure of the HFA-Windham Lenders' security interests
8 in the Enterprise Note and the Enterprise Mortgage; and (e) relief from the automatic stay.

9 The parties to the Platinum Adversary Proceeding have now entered into a settlement of
10 that Proceeding. Pursuant to the settlement, HFA Asylum will assign to Platinum all of its right,
11 title and interest in the Enterprise Note, the Enterprise Mortgage, and any other collateral
12 securing the Enterprise Note. A condition to the proposed settlement, however, is that Platinum
13 use its best efforts to obtain an order of the Nevada Bankruptcy Court making clear that
14 Compass, as Platinum's predecessor in interest, had the sole right to service and collect the HFA-
15 Windham Loan after the closing of the Asset Sale Transaction. Paragraph Two of the proposed
16 settlement agreement states:

17 2. USA Capital Order. Within forty-five (45) days of the Effective
18 Date of this Agreement, Platinum shall cause to be entered an Order (the "USA
19 Capital Order") by the Nevada Bankruptcy Court in the USA Capital Bankruptcy
20 Cases providing that pursuant to the USA Capital Confirmed Plan, Compass
21 Partners, or its assignee(s) was the transferee of the right to receive re-payment of
22 the funds transferred from USA Capital to HFAH or Asylum on November 16,
2004 (\$5,050,000.00) and January 3, 2005 (\$5,00,000.00). The USA Capital
23 Order shall conform substantially to the form of proposed order attached hereto in
24 Exhibit F. [The form of proposed order is attached to the instant Motion as
25 **Exhibit 10.**]

26 *II. Legal Argument*

27 Platinum seeks relief in this instant Motion pursuant to Bankruptcy Code sections 105(a)
28 and 1142(b), Article VIII(D) of the Plan and the Confirmation Order. Section 105(a) provides,
in relevant part: "The court may issue any order, process, or judgment that is necessary to carry
out the provisions of this title." 11 U.S.C. §105(a). Section 1142(b) provides:

The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

11 U.S.C. §1142(b). Read together, these provisions grant to court substantial latitude to issue orders in aid of consummation and implementation of a confirmed chapter 11 plan.

Various provisions of the Plan and the Confirmation Order also establish that the Court has the power to grant the relief sought herein. Section 10 of Article VIII(D) of the Plan provides that the Court retained jurisdiction to resolve issues and enter orders "as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan" Section 11 of Article VIII(D) provides that the Court retained jurisdiction to hear and determine disputes "arising under agreements, documents or instruments executed in connection with the Plan" Section 6 of the same Article of the Plan provides that the Court retained jurisdiction to hear and determine "all matters related to the transfer of the Acquired Assets." And, pursuant to section 9 of Article VIII(D) of the Plan, the Court retained jurisdiction to hear and determine any and all contest or litigated matters "arising out of, arising under or related to the Chapter 11 Cases" *See* Third Amended Joint Chapter 11 Plan of Reorganization, Docket No. 1799, pages 82 and 83 of 92 (copy attached hereto as **Exhibit 11**).

Paragraph 14 of the Confirmation Order governs the terms of Compass's acquisition of the Debtor's loan servicing agreements and provides that such acquisition is free and clear of all liens, claims and interests, subject to the potential exercise of "Surviving Article 3 Rights." Paragraph 14 also contains restrictions on the ability of subsequent loan servicers to affect the rights of Compass to default interest, late charges and similar fees. and provides that the Court retained jurisdiction to determine issues relating to the exercise of Surviving Section 3 Rights. *See* Confirmation Order, Docket No. 2376, pages 5 and 6 of 29 (*see* **Exhibit 1**).

Here, the relief sought falls within the parameters of the foregoing provisions. Upon the closing of Compass's purchase of the Acquired Assets, Compass (or its designee) was the owner of all of USACM's rights under loan servicing agreements for the loans listed on APA Schedule

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2, including the loan servicing rights relating to the HFA-Windham Loan. Compass subsequently assigned those rights to Platinum. Platinum undertook to enforce the rights of the HFA-Windham Direct Lenders by filing the Platinum Adversary Proceeding seeking relief from the Connecticut Bankruptcy Court enforcing the rights of the HFA-Windham Lenders in the Windham Property. The result of Platinum's efforts is a settlement pursuant to which the HFA-Windham Lenders' rights are completely vindicated. The only contingency is that Platinum is required to seek an order of this Court that (a) Compass (or its assignee) was, in fact, the servicer of the HFA-Windham Loan after the closing of the Asset Sale Transaction and, thus, had the right to collect the funds due in connection with that loan; and (b) that pursuant to the terms of the Plan and the Confirmation Order, other parties in interest are barred from challenging Compass's (and, thus, Platinum's) standing as the servicer of the HFA-Windham Loan.

The order sought herein is within the scope of Bankruptcy Code sections 105(a) and 1142(b) in that it is an order that is necessary to carry out the provisions of Title 11 and that is necessary to consummate the Plan. The Plan provisions governing retention of jurisdiction also make clear that the Court can and should issue the order sought here, which is necessary or appropriate to implement the Plan and which arises under agreements executed in connection with the Plan. The order sought here also relates to the transfer of the Acquired Assets as it deals directly with the rights to service the HFA-Windham Loan purchased by Compass pursuant to the Plan. Accordingly, Platinum moves the Court to enter an order as described above and in substantially the form attached hereto as **Exhibit 10**.

DATED this 8th day of May 2008.

BROWNSTEIN HYATT FARBER SCHRECK, P.C.

By: /s/ James D. Greene

James D. Greene, Esq.

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Attorneys for Platinum Properties 1, Inc.

EXHIBIT 1

(together with USACM, the "Sellers") and DTDF, USA Realty and USA Securities, as acknowledging parties, and Compass is hereby approved.

13. The Debtors and Compass, as may be mutually agreed by such parties, are hereby authorized to consummate the Asset Purchase Agreement at any time following ten (10) days after entry of this Confirmation Order, which may occur prior to the Effective Date of the Plan.

14. Except as expressly permitted or otherwise specifically provided for in the Asset Purchase Agreement or this Confirmation Order, pursuant to sections 105(a), 1123, and 363(f) of the Bankruptcy Code, the Acquired Assets shall be transferred to the Asset Purchaser on the terms and conditions set forth in the Asset Purchase Agreement, and upon Closing shall be, free and clear of all liens, claims, interests, obligations and encumbrances whatsoever, including, but not limited to, (A) all monetary and non-monetary defaults and rights that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Sellers' or the Asset Purchaser's interest in, or rights in or under, the Acquired Assets, or any similar rights, based in any way on any action taken (or failed to be taken) by any of the Debtors or any other matter or occurrence relating to the period prior to the Closing (other than any right that existed and was matured and exercisable, as of the Petition Date, to effect a substitution of USACM as loan servicer under Section 3 of any Loan Servicing Agreement, as well as any defenses of the loan servicer thereto (a "Surviving Section 3 Right")); (B) taxes arising under or out of, in connection with, or in any way relating to the existence, ownership, management or servicing of the Acquired Assets prior to the Closing; and (C) (i) all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership and (ii) all debts arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers' predecessors or affiliates; all claims (as that term is defined in the Bankruptcy Code), obligations, liabilities, rights of recoupment or setoff, demands, guaranties, options, rights, restrictions, interest and matters of any kind and nature in any way relating to the existence, ownership, management or servicing of

1 the Acquired Assets prior to Closing, whether known or unknown, contingent or otherwise,
2 whether arising prior to or subsequent to the commencement of these cases pursuant to chapter 11
3 of the Bankruptcy Code, and whether imposed by agreement, understanding, law, equity or
4 otherwise, including but not limited to claims otherwise arising under doctrines of successor
5 liability (collectively, "Interests"); provided, however, that, in connection with any attempted post-
6 Closing exercise of a Surviving Section 3 Right: (a) the Direct Lenders must provide Compass at
7 least thirty (30) days prior written notice of the intended exercise of such right in accordance with
8 section 8 of the Loan Servicing Agreement, (b) Compass shall have the right to challenge the
9 exercise of such Surviving Section 3 Right by filing a motion with this Court prior to the
10 expiration of such thirty (30) day period to determine whether such Surviving Section 3 Right has
11 been properly and validly exercised (the "Compass Motion") and the Court shall retain jurisdiction
12 to adjudicate any such disputes, (c) in the event Compass timely files such Compass Motion, the
13 effectiveness of the attempted exercise of such Surviving Section 3 Right shall be stayed pending
14 this Court's entry of an order in respect of the Compass Motion, and (d) the post-Closing survival
15 of such Surviving Section 3 Right shall not impair in any respect any rights or interests of
16 Compass under the Loan Servicing Agreements, including, without limitation, its rights under
17 Section 2(c)(iii) of the Loan Servicing Agreement. In the event of a proper exercise of remedies
18 under Section 3 of the Loan Servicing Agreement, (i) neither the Direct Lenders nor any
19 replacement servicer selected by such Direct Lender shall have the right or ability to compromise,
20 subordinate, or impair, in any respect, any rights, claims or interests purchased by Compass from
21 the Estates for default interest, accrued servicing fees, late charges, success fees, or other amounts
22 under the Loan Servicing Agreement, and (ii) this Confirmation Order shall be binding upon such
23 replacement servicer regardless of whether such replacement servicer actually received such copy
24 of the Confirmation Order.

25 15. Any and all such Interests whatsoever shall attach to the net proceeds of the Asset
26 Sale Transaction in the order of their priority, with the same validity, force and effect which they
27 now have as against the Acquired Assets, subject to any claims and defenses that the Sellers may
28 possess with respect thereto.

EXHIBIT 2

"Assets" means, collectively, all First Trust Deed Fund Assets listed on Schedule 1 and the Commercial Mortgage Assets listed on Schedule 2, together with the Personal Property.

"Auction" means the auction scheduled by the Bankruptcy Court in connection with the Bid Procedures Motion.

"Auction Date" means December 7, 2006.

"Bankruptcy Code" means Title I of the Bankruptcy Reform Act of 1978, as amended, set forth in sections 101 et seq. of title 11 of the United States Code.

"Bid Procedures Motion" means a motion filed by the Debtors on or about September 22, 2006, seeking Bankruptcy Court approval of certain bidding procedures on terms that are acceptable to Purchaser.

"Borrower" means any obligor under a Loan.

"Business Day" means a day other than Saturday, Sunday or any day on which banks located in the State of Nevada are authorized or obligated to close.

"Closing" means the closing of the purchase and sale of the Assets on the Closing Date pursuant to the Sale Approval Order, and transfer of each of the Assets to Purchaser consistent with the terms hereof.

"Closing Date" means that date on which the Sale Approval Order becomes a Final Order, and each of the Assets actually is transferred to Purchaser consistent with the terms hereof, provided that in no event shall the Closing Date be later than the Outside Approval Date.

"Commercial Mortgage" means USA Commercial Mortgage Company.

"Commercial Mortgage Assets" means all Servicing Agreements and Personal Property for all of the Serviced Loans set forth in the Serviced Loan Schedule, including, without limitation, Default Rate Interest, Accrued Servicing Fees, Late Charges, Success Fees, other fees and sums due the loan servicer under any of the Servicing Agreements and all proceeds of all Serviced Loans and Serviced Loan participations and receivables related solely to these purchased Serviced Loans and Serviced Loan participations owed to Commercial Mortgage, to the extent of Commercial Mortgage's interest therein, as set forth in the Serviced Loan Schedule. Commercial Mortgage Assets excludes any other assets not specifically identified herein, including, (i) USACM's rights (including indemnification, insurance rights and claims and avoidance actions), claims and recoveries against third parties arising out of, or relating to, events prior to the Closing Date with respect to Commercial Mortgage Assets or arising at any time with respect to assets which are not Commercial Mortgage Assets, (ii) Prepaid Interest, (iii) IP Receivable, (iv) all cash, accounts receivable, notes receivable, interests in promissory notes which are not Mortgage Notes, Serviced Loans or Loans, tax refunds and other similar assets, (v) tangible or intangible assets of USACM which are not Personal Property and (vi) loans made to Placer Vineyards and Marquis Hotel, which shall not be included on the Serviced Loan Schedule.

EXHIBIT 3

SCHEDULE 2

Performance as of 7/31/06	Loan Name	Origination Date	7/31/06 Loan Outstanding	FTDF Ownership		USCMC Ownership	
				%	\$	%	\$
Performing	Goss Road	11/2/2004	1,000,000	0.00%	-	0.25%	2,500
Non-Performing	Gramercy Court Condos	6/25/2004	34,884,500	13.10%	4,570,500	0.00%	-
Non-Performing	Harbor Georgetown	8/16/2004	8,800,000	5.80%	510,000	0.00%	-
Performing	Hesperia II	4/1/2005	4,250,000	0.00%	-	0.00%	-
Non-Performing	HFA- Clear Lake	1/6/2005	16,050,000	0.00%	-	0.00%	-
Non-Performing	HFA- Windham	11/15/2004	5,550,000	0.00%	-	0.00%	-
Non-Performing	HFA-Clear Lake 2nd	6/24/2005	2,750,000	0.00%	-	0.29%	8,000
Non-Performing	HFAH/Monaco	12/19/2003	4,000,000	100.00%	4,000,000	0.00%	-
Non-Performing	Huntsville	3/31/2004	10,475,000	4.77%	500,000	0.00%	-
Performing	I-40 Gateway West	1/11/2005	4,530,000	0.00%	-	0.00%	-
Performing	I-40 Gateway West, LLC 2nd	3/1/2006	1,065,000	0.00%	-	0.00%	-
Non-Performing	Interstate Commerce Center Phase II	8/11/2004	1,856,849	86.34%	1,603,204	0.00%	-
Performing	La Hacienda Estate, LLC	11/11/2004	6,255,000	0.00%	-	0.80%	50,000
Non-Performing	Lake Helen Partners	12/7/2004	3,169,704	28.77%	908,808	0.94%	29,723
Non-Performing	Lerin Hills	12/7/2005	10,350,000	0.00%	-	0.00%	-
Non-Performing	Margarita Annex	7/26/2004	12,000,000	24.42%	2,930,000	0.00%	-
Non-Performing	Marlton Square	8/11/2005	30,000,000	0.39%	118,000	0.89%	267,500
Non-Performing	Marlton Square 2nd	8/11/2005	6,000,000	0.00%	-	0.00%	-
Performing	Mountain House Business Park	6/10/2004	16,800,000	5.21%	875,000	0.17%	28,000
Non-Performing	Oak Shores II	6/6/2005	12,150,000	0.03%	3,625	0.00%	-
Performing	Ocean Atlantic	11/1/2005	2,700,000	0.00%	-	0.00%	-
Non-Performing	Ocean Atlantic \$9,425,000	1/23/2006	8,925,000	14.61%	1,303,500	0.00%	-
Non-Performing	Palm Harbor One	12/14/2005	28,480,000	5.60%	1,594,000	0.00%	-
Non-Performing	Rio Rancho Executive Plaza, LLC	1/17/2006	2,250,000	3.11%	70,000	0.00%	-
Performing	Roam Development Group L.P.	3/23/2005	25,601,735	2.37%	606,688	0.00%	-
Non-Performing	Shamrock Tower, LP	8/5/2004	10,500,000	31.43%	3,300,000	0.00%	-
Non-Performing	Slade Development	12/6/2005	3,525,000	0.00%	-	1.42%	60,000
Performing	Southern California Land 2nd	8/3/2005	2,800,000	0.00%	-	1.25%	35,000
Non-Performing	Standard Property Development	2/27/2006	9,640,000	8.96%	671,000	0.00%	-
Performing	SVRB \$4,500,000	4/27/2005	1,424,082	0.00%	-	0.00%	-
Performing	SVRB 2nd \$2,325,000	4/27/2005	2,325,000	0.00%	-	0.00%	-
Non-Performing	Tapla Ranch	9/28/2004	22,000,000	1.43%	314,000	0.00%	-
Non-Performing	Ten-Ninety, Ltd./\$4,150,000	12/30/2002	4,150,000	0.00%	-	0.00%	-
Non-Performing	The Gardens Phase II	3/31/2006	2,500,000	100.00%	2,500,000	0.00%	-
Performing	The Gardens, LLC \$2,425,000	8/15/2005	1,925,000	1.52%	29,228	4.01%	77,146

EXHIBIT 4

SCHEDULE 1

Performance as of 7/31/06	Loan Name	Origination Date	7/31/06 Loan Outstanding	FTDF Ownership	
				%	\$
Performing	Fiesta Development \$6.6	11/14/2005	\$ 6,600,000	100.00%	\$ 6,600,000
Performing	University Estates	4/11/2005	4,825,920	100.00%	4,825,920
Non-Performing	Gramercy Court Condos	6/25/2004	34,884,500	13.10%	4,570,500
Non-Performing	Franklin - Stratford Investments, LLC	3/30/2005	5,225,000	80.67%	4,215,000
Non-Performing	HFAH/Monaco	12/19/2003	4,000,000	100.00%	4,000,000
Performing	Cloudbreak LV	12/17/2003	3,800,000	99.31%	3,773,675
Non-Performing	Eagle Meadows Development	10/19/2005	31,050,000	11.76%	3,652,000
Non-Performing	Shamrock Tower, LP	8/5/2004	10,500,000	31.43%	3,300,000
Non-Performing	Margarita Annex	7/26/2004	12,000,000	24.42%	2,930,000
Non-Performing	The Gardens Phase II	3/31/2006	2,500,000	100.00%	2,500,000
Performing	Columbia Managing Partners	9/1/2005	2,210,000	100.00%	2,210,000
Non-Performing	Brookmere/Matteson \$27,050,000	10/29/2003	5,964,848	33.88%	2,021,085
Non-Performing	Anchor B, LLC	5/31/2005	5,835,422	33.36%	1,946,422
Non-Performing	Interstate Commerce Center Phase II	8/11/2004	1,856,849	86.34%	1,603,204
Non-Performing	Palm Harbor One	12/14/2005	28,480,000	5.60%	1,594,000
Non-Performing	Ocean Atlantic \$9,425,000	1/23/2006	8,925,000	14.61%	1,303,500
Non-Performing	Binford Medical Developers	8/31/2005	7,450,000	17.25%	1,285,000
Performing	The Gardens, LLC Timeshare	3/24/2004	3,902,274	31.03%	1,211,050
Performing	Cottonwood Hills, LLC	6/14/2005	4,000,000	25.00%	1,000,000
Non-Performing	Lake Helen Partners	12/7/2004	3,159,704	28.77%	908,908
Performing	Mountain House Business Park	8/10/2004	16,800,000	5.21%	875,000
Non-Performing	ComVest Capital	1/11/2006	4,125,000	17.82%	735,000
Non-Performing	6425 Gess, LTD	4/14/2005	26,500,000	2.63%	696,000
Non-Performing	Standard Property Development	2/27/2006	9,640,000	6.96%	671,000
Performing	Roam Development Group L.P.	3/23/2005	25,601,735	2.37%	605,688
Non-Performing	Harbor Georgetown	8/16/2004	8,800,000	5.80%	510,000
Non-Performing	Huntsville	3/31/2004	10,475,000	4.77%	500,000

SCHEDULE 1

Performance as of 7/31/06	Loan Name	Origination Date	7/31/06 Loan Outstanding	FTDF Ownership	
				%	\$
Non-Performing	Castaic Partners II, LLC	7/11/2005	5,600,000	7.59%	425,000
Non-Performing	Amesbury/Hatters Point	12/16/2002	19,242,193	1.72%	330,016
Non-Performing	Tapia Ranch	9/28/2004	22,000,000	1.43%	314,000
Performing	J. Jireh's Corporation	9/2/2005	8,825,000	3.00%	265,000
Non-Performing	Wasco Investments	11/23/2004	6,450,000	3.02%	195,000
Performing	Bay Pompano Beach	6/20/2005	14,680,390	1.20%	176,623
Non-Performing	Del Valle - Livingston	8/25/2005	19,250,000	0.67%	129,000
Non-Performing	Elizabeth May Real Estate	2/24/2006	10,050,000	1.19%	120,000
Non-Performing	Marlton Square	8/11/2005	30,000,000	0.39%	118,000
Non-Performing	Clear Creek Plantation	3/15/2005	2,900,000	3.45%	100,000
Non-Performing	Gateway Stone	11/18/2005	13,185,000	0.76%	100,000
Non-Performing	3685 San Fernando Road Partners	8/2/2005	7,350,000	1.12%	82,000
Non-Performing	Meadow Creek Partners, LLC	2/23/2006	8,250,000	0.87%	72,000
Non-Performing	Rio Rancho Executive Plaza, LLC	1/17/2006	2,250,000	3.11%	70,000
Non-Performing	Urban Housing Alliance - 435 Lofts	7/13/2005	8,150,000	0.37%	30,000
Performing	The Gardens, LLC \$2,425,000	8/15/2005	1,925,000	1.52%	29,226
Non-Performing	Castaic Partners III, LLC	9/22/2005	4,675,000	0.53%	25,000
Non-Performing	Foxhill 216, LLC	2/23/2006	25,980,000	0.10%	25,000
Non-Performing	Oak Shores II	6/6/2005	12,150,000	0.03%	3,925
Performing	Fiesta Murrieta	4/14/2005	6,500,000	0.00%	-
Non-Performing	Copper Sage Commerce Center Phase II	3/1/2006	3,550,000	0.00%	-
Non-Performing	Slade Development	12/5/2005	3,525,000	0.00%	-
Performing	La Hacienda Estate, LLC	11/11/2004	6,255,000	0.00%	-
Performing	Southern California Land 2nd	8/3/2005	2,800,000	0.00%	-
Non-Performing	Bundy Canyon \$5,000,000	9/28/2005	4,250,000	0.00%	-
Non-Performing	BarUSA/\$15,300,000	11/24/2003	15,300,000	0.00%	-
Non-Performing	Fiesta Oak Valley	6/15/2004	20,500,000	0.00%	-

SCHEDULE 1

Performance as of 7/31/06	Loan Name	Origination Date	7/31/06 Loan Outstanding	FTDF Ownership	
				%	\$
Non-Performing	HFA-Clear Lake 2nd	6/24/2005	2,750,000	0.00%	-
Performing	Cornman Toltec 160, LLC	6/24/2005	6,375,000	0.00%	-
Performing	Preserve at Galleria, LLC	10/6/2005	3,711,750	0.00%	-
Performing	Goss Road	11/2/2004	1,000,000	0.00%	-
				Total	<u>\$ 62,652,742</u>

EXHIBIT 5

B. No Substantive Consolidation Or Recharacterization Of Loans.

On the Effective Date, all of the assets of each Debtor shall be sold, transferred, distributed or retained by each of such Debtor's respective Estates, or the Post-Effective Date Entities created for each such Debtor and its Estate under the Plan, with all proceeds of sold, transferred, or liquidated assets of each Debtor being retained by the respective Debtor's Estate, or the Post-Effective Date Entities created for each such Debtor and its Estate under the Plan. All Claims against and Equity Interests in the Debtors and their respective Estates shall be retained by the holders of Allowed Claims and Allowed Equity Interests against and in the respective Estates, except as otherwise provided for under the Plan. The allowance, voting, treatment and distributions on account of Allowed Claims and Allowed Equity Interests shall be as set forth in the Plan on an individual Estate basis. Notwithstanding any inference to the contrary in this section, Equity Interests in USACM, USA Realty and USA Securities shall be retained only until the Effective Date, at which date, those Equity Interests shall be cancelled on an individual Estate basis under the Plan.

Notwithstanding any provision of this Plan, nothing in this Plan shall constitute or effect a recharacterization of any Loan or any interest in a Loan as giving rise to a Claim against or Equity Interest in any of the Debtors. If any Entity believes that all or a portion of the Loans should be so recharacterized, it must expressly raise this issue by Filing an objection to the Confirmation of the Plan on this basis. Any Entity who fails to File such an objection to Confirmation of the Plan shall be forever barred and estopped from arguing, asserting or claiming in any way that its Loan or its interest in a Loan should be recharacterized as an Allowed Claim against or Allowed Equity Interest in a Debtor.

C. Asset Sale Transaction.

The Plan will be implemented in part by the Asset Sale Transaction. In implementation of the Asset Sale Transaction, USACM and FTDF, as sellers, DTDF, USA Securities and USA Realty, as acknowledging parties, and SPCP Group, LLC, as purchaser, have entered into the Asset Purchase Agreement. The Asset Purchase Agreement and the Bid Procedures Order provide that the Acquired Assets are sold to SPCP Group, LLC or, as part of the Auction, to a Third Party

1 Bidder making a Higher and Better Offer. Pursuant to the Asset Sale Transaction, the Asset
 2 Purchaser (either SPCP Group, LLC or a Third Party Bidder as determined by the Auction) will
 3 purchase the following Acquired Assets:

4 1. FTDF's proportional interest in 44 different Loans for Cash consideration of \$46
 5 million, subject to certain adjustments; and

6 2. USACM's post-Closing rights to service Loans pursuant to the Loan Servicing
 7 Agreements for the Loans and related personal property for Cash consideration based on the future
 8 (A) collection of servicing fees, (B) collection of default rate interest, and (C) other payments and
 9 obligations set forth in the Asset Purchase Agreement.

10 Except as expressly agreed to otherwise by the Debtors and the Asset Purchaser, the
 11 Acquired Assets will be sold free and clear of all liens, Claims, encumbrances, rights of third
 12 parties and interests. The Confirmation Order shall constitute an Order pursuant to section 363(b)
 13 and (f) of the Bankruptcy Code authorizing the sale of the Estates' interests in the Acquired Assets
 14 to the Asset Purchaser. The Confirmation Order shall provide that the Asset Purchaser is a good
 15 faith purchaser of assets within the meaning of section 363(m) of the Bankruptcy Code and has
 16 paid fair consideration and reasonable equivalent value of the Acquired Assets that are purchased.
 17 Except as set forth in the Asset Purchase Agreement and the Plan, the Asset Purchaser shall have
 18 no liability for Claims or Equity Interests against the Debtors (whether or not currently known)
 19 based on its purchase of Acquired Assets.

20 After the Auction, the Asset Sale Transaction shall be approved in connection with
 21 Confirmation of the Plan. The Allocated Net Sale Proceeds from the Asset Sale Transaction shall
 22 be distributed to FTDF and USACM Trust, respectively, on the Effective Date of the Plan.

23 **D. Post-Effective Date Entities.**

24 **1. The USACM Trust.**

25 The USACM Trust shall be governed and created pursuant to the Plan and the USACM
 26 Trust Agreement. A copy of the proposed USACM Trust Agreement shall be included in the Plan
 27 Documents Supplement. The USACM Trust shall have the discretion, subject to review by the
 28 USACM Trust Committee appointed in accordance with the USACM Trust Agreement, to retain

1 and compensate professionals, compensate the USACM Trustee, compensate the Debtors'
2 Professionals for any assistance of information requested of them by the USACM Trust, employ
3 staff or agents, object to Claims, realize assets, whether by suit, compromise, release or otherwise,
4 and take all actions reasonable to maximize the recovery to beneficiaries of the USACM Trust.
5 The USACM Trust Agreement shall provide for all expense reserves necessary for the USACM
6 Trust.

7 The USACM Committee will propose the Person to serve as the USACM Trustee, after
8 soliciting advice from and obtaining the consent of USACM and the other Committees, and will
9 provide all disclosures required respecting the Person pursuant to sections 1129(a)(4) and (a)(5) of
10 the Bankruptcy Code, not less than ten (10) days before the Confirmation Hearing. The USACM
11 Trustee shall be approved by the Court at the Confirmation Hearing.

12 The USACM Trust shall be funded with all assets of the USACM Estate not collected or
13 disposed of prior to the Effective Date, including Cash and noncash proceeds. Assets of the
14 USACM Estate shall include the USACM Loans, the Prepaid Interest (including Prepaid Interest
15 collected by the Asset Purchaser post-Effective Date and including the DTDF Prepaid Interest,
16 subject to the objection of the DTDF Committee, which shall be determined by the Court if not
17 settled), the USACM Accounts (including USACM Estate's share of the IP \$58 Million
18 Promissory Note), all USACM Litigation Claims, including without limitation the Non-Debtor
19 Insider Litigation, belonging to or assertable by the USACM Estate, the FTDF Litigation Claims
20 transferred to USACM pursuant to section E.2.j of Art. IV of the Plan, and all servicing and
21 related fees to be retained by USACM as set forth in the Asset Purchase Agreement and which
22 will be included in the Asset Sale Transaction to the Asset Purchaser. The USACM Trust shall
23 receive its share of the Non-Debtor Insider Litigation of the USACM Estate and may, without
24 further order of the Court, enter into a joint prosecution or sharing agreement with Post-Effective
25 Date DTDF. Pending Litigation shall be prosecuted or defended by the Asset Purchaser, as
26 appropriate, if the Asset Acquirer, in its sole discretion, agrees to do so in writing within ten (10)
27 Business Days of the Effective Date of the Plan. If Asset Purchaser does not agree to prosecute or
28

EXHIBIT 6

SCHEDULE 2

Performance	Loan Name	Origination Date	7/31/06 Loan Outstanding	Funds Interest		Servicing Fees as of 6/30/2006		
				%	\$	Accrued	Fees Paid	Net Unpaid
Non-Performing	Eagle Meadows Development	10/19/05	31,050,000	11.76%	3,652,000	211,600	131,009	80,591
Non-Performing	Elizabeth May Real Estate, LLC	2/24/06	10,050,000	1.19%	120,000	33,755	10,374	23,381
Performing	Fiesta Development \$6.6 (Fiesta Development, Inc.)	11/14/05	6,800,000	100.00%	6,600,000	22,000	16,500	5,500
Performing	Fiesta Murrieta (Fiesta Development, Inc.)	4/14/05	6,500,000	1.46%	95,039	78,722	73,722	5,000
Non-Performing	Fiesta Oak Valley (Oak Mesa Investors, LLC)	6/15/04	20,500,000	0.05%	9,500	333,015	-	333,015
Non-Performing	Fiesta USA/Stoneridge (Capital Land Investors, LLC)	9/22/03	10,000,000	0.00%	-	212,526	-	212,526
Non-Performing	Foxhill 216, LLC	2/23/06	25,980,000	0.10%	25,000	112,047	52,122	59,926
Non-Performing	Franklin - Stratford Investments, LLC	3/30/05	5,225,000	100.00%	5,225,000	29,222	25,845	3,377
Non-Performing	Gateway Stone (Gateway Stone Associates, LLC)	11/18/05	13,185,000	0.76%	100,000	61,677	28,423	33,254
Performing	Goss Road (Savannah Homes, LLC)	11/2/04	1,000,000	0.25%	2,500	3,333	3,333	(0)
Non-Performing	Gramercy Court Condos (Gramercy Court, Ltd.)	6/25/04	34,884,500	13.10%	4,570,500	151,312	42,293	109,018
Non-Performing	Harbor Georgetown, L.L.C.	8/16/04	8,800,000	5.80%	510,000	155,600	112,602	42,998
Non-Performing	Hasley Canyon (Los Valles Land & Golf, LLC.)	3/3/04	11,700,000	0.00%	-	259,392	161,699	97,694
Performing	Hesperia II (Southern California Land Development, LLC)	4/1/05	4,250,000	0.00%	-	47,312	47,312	(0)
Non-Performing	HFA- Clear Lake LLC	1/6/05	16,050,000	0.88%	141,000	230,499	-	230,499
Non-Performing	HFA- Windham (HFAH Asylum, LLC)	11/15/04	5,550,000	0.00%	-	86,636	-	86,636
Non-Performing	HFA-Clear Lake 2nd (HFAH Clear Lake, LLC)	6/24/05	2,750,000	0.29%	8,000	27,014	-	27,014
Non-Performing	HFAH/Monaco, LLC	12/19/03	4,000,000	100.00%	4,000,000	100,322	-	100,322
Non-Performing	Huntsville (West Hills Park Joint Venture)	3/31/04	10,475,000	10.73%	1,124,000	159,961	95,827	64,133
Performing	I-40 Gateway West, LLC	1/11/05	4,530,000	0.00%	-	15,100	15,100	0
Performing	I-40 Gateway West, LLC 2nd	3/1/06	1,065,000	0.00%	-	3,493	830	2,663
Non-Performing	Interstate Commerce Center Phase II (ISCC Phase II, LLC)	8/11/04	1,856,849	100.00%	1,856,849	6,757	-	6,757
Performing	La Hacienda Estate, LLC	11/11/04	6,255,000	0.80%	50,000	20,390	20,311	79
Non-Performing	Lake Helen Partners	12/7/04	3,159,704	35.76%	1,129,948	34,564	22,687	11,878
Non-Performing	Lerin Hills, LTD	12/7/05	10,350,000	0.00%	-	34,284	25,545	8,738
Non-Performing	Margarita Annex	7/26/04	12,000,000	24.42%	2,930,000	228,338	197,759	30,579
Non-Performing	Marlton Square (MS Acquisition Company, LLC)	8/11/05	30,000,000	1.29%	385,500	266,255	166,673	99,582

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Loan Name Listing:	Borrower:
HFA- Windham	Homes for America Holdings and affiliates, Homes For America Holdings Asylum, LLC
HFA- Riviera 2 nd	Homes for America Holdings and affiliates, Riveria-Homes For America Holdings, LLC
Ocean Atlantic \$9,425,000	Ocean Atlantic Chicago, LLC
Palm Harbor One	Palm Harbor One, LLC
Bundy Canyon \$5,000,000	Bundy Canyon Land Development, LLC
Amesbury/Hatters Point	Amesburyport Corporation
Bundy Canyon \$7,500,000	Bundy Canyon Land Development, LLC
Columbia Managing Partners	Columbia Managing Partners, LLC and David Rentz
Binford Medical Developers	Binford Medical Developers, LLC
Franklin - Stratford Investments, LLC	Franklin/Stratford Investments, LLC
Elizabeth May Real Estate	Elizabeth May Real Estate, LLC
La Hacienda Estate, LLC	La Hacienda Estates, LLC
Huntsville	West Hills Park Joint Venture, Curtis Development, LLC, and J A Dev., LC
Gramercy Court Condos	Gramercy Court, Ltd. and Treetops Management, Inc.
Lerin Hills	Lerin Hills, Ltd. and Lerin Hills Development Company, LLC
Wasco Investments	Wasco Investments, LLC
Foxhill 216, LLC	Fox Hills 185, LLC, Fox Hills River East, LLC, Fox Hills 119, LLC, Fox Hills 62, LLC, Fox Hills 37, LLC and Fox Hills Fresno Slough, LLC and Kent Hoggan
Gateway Stone	Gateway Stone Associates, LLC
Brookmere/Matteson \$27,050,000	Brookmere LLC and Lord & Essex Matteson, LLC
Rio Rancho Executive Plaza, LLC	Rio Rancho Executive Plaza, LLC
Eagle Meadows Development	Eagle Meadows Development
The Gardens Phase II	The Gardens, LLC
Copper Sage Commerce Center Phase II	Copper Sage Commerce Center, LLC
Standard Property Development	Standard Property Development, LLC
Bundy Canyon \$8,900,000	Bundy Canyon Land Development, LLC
Meadow Creek Partners, LLC	Meadow Creek Partners, LLC
Ten-Ninety	Ten Ninety, Ltd. and William R. Luca and Dorothy Luca, Trustees of the Luca Family Trust
Saddleback	Saddleback

Schedule 3.4(f)

Litigation, Proceeding, Governmental Investigations,
Judicial Order, Injunction or Decree with respect to the Loans

Claims or potential claims of the Borrowers, their principals, or other obligors with respect to the following Loans:

Loan Name Listing:	Borrower:
3685 San Fernando Road Partners	3685 San Fernando Road Partners, L.P.
5055 Collwood, LLC	5055 Collwood, LLC
60th Street Venture, LLC	60th Street Venture, LLC
BySynergy, LLC \$4,434,446	BySynergy, LLC
Cabernet	Cabernet Highlands, LLC
Fiesta Oak Valley	Oak Mesa Investors, LLC,
Fiesta USA/Stoneridge	Capital Land Investors, LLC
Glendale Tower Partners	Glendale Tower Partners, L.P.
Hasley Canyon	Los Valles Land & Golf, LLC
Hesperia II	Southern California Land Development, LLC
SVRB \$4,500,000	SVRB Investments, LLC
SVRB 2nd \$2,325,000	SVRB Investments, LLC
Urban Housing Alliance - 435 Lofts	Urban Housing Alliance, LLC
Cornman Toltec 160, LLC	Cornman Toltec 160, LLC
Bundy Canyon \$2,500,000	Bundy Canyon Land Development, LLC
Southern California Land 2 nd	Southern California Land Development, LLC
University Estates	University Estates, Inc.
Slade Development	Slade Development, Inc.
Castaic Partners III, LLC	Castaic Partners III, LLC
ComVest Capital	ComVest Capital Satellite Arms, Inc.
HFA- Windham	Homes for America Holdings and affiliates, Homes For America Holdings Asylum, LLC
HFA- Riviera 2 nd	Homes for America Holdings and affiliates, Riviera- Homes For America Holdings, LLC
Ocean Atlantic \$9,425,000	Ocean Atlantic Chicago, LLC
Palm Harbor One	Palm Harbor One, LLC
Bundy Canyon \$5,000,000	Bundy Canyon Land Development, LLC
Amesbury/Hatters Point	Amesburyport Corporation
Bundy Canyon \$7,500,000	Bundy Canyon Land Development, LLC
Columbia Managing Partners	Columbia Managing Partners, LLC and David Rentz
Binford Medical Developers	Binford Medical Developers, LLC
Franklin - Stratford Investments, LLC	Franklin/Stratford Investments, LLC
Elizabeth May Real Estate	Elizabeth May Real Estate, LLC
La Hacienda Estate, LLC	La Hacienda Estates, LLC
Huntsville	West Hills Park Joint Venture, Curtis Development, LLC, and J A Dev., LC
Gramercy Court Condos	Gramercy Court, Ltd. and Treetops Management, Inc.
Lerin Hills	Lerin Hills, Ltd. and Lerin Hills Development Company, LLC